**HONOURABLE SRI JUSTICE R. SUBHASH REDDY**

**WRIT PETITION No. 7537 OF 2006**

**Dated 17th November, 2006.**

Between

Sri Sarada High School, P.W.D. Colony, Pulivendla,
Kadapa District, rep. by its Secretary & Correspondent,
K.C.Nagi Reddy.

…Petitioner

and

The Government of AP, Education Department,
Secretariat, Hyderabad and ors.

……Respondents.

**HONOURABLE SRI JUSTICE R. SUBHASH REDDY**

**WRIT PETITION No. 7537 OF 2006**

**ORDER:**

The petitioner, a School in Kadapa District, has filed this Writ Petition questioning the validity of the proceedings in Memo No.13632/PS-1/2005, dated 26-9-2005 issued by the first respondent-Government rejecting their request for admission of certain posts to grant-in-aid.

It is stated that the petitioner-school was initially started in the year 1942 with elementary sections and subsequently it was upgraded to Upper Primary School and then to High School during the academic years 1981-82 and 1983-84 respectively. During the

years 1989, 1992 and 1994, about 14 posts of teaching and 4 posts of non-teaching were admitted to grant-in-aid. Further it is stated, that the petitioner-school was sanctioned five more un-aided posts of teaching and non-teaching and in the said posts, appointments were made by the management. As the said posts were un-aided, salaries are being paid to the incumbents holding the said posts by the management itself, and, subsequently, the management has applied for admission of the said posts to grant-in-aid. When the said posts were not admitted to grant-in-aid, earlier, the petitioner-school had filed Writ Petition No.7355 of 2001 and during the pendency of the said Writ Petition, orders dated 8-4-2004 were passed rejecting the claim of the petitioner for admission of unaided posts to grant-in-aid. The order dated 8-4-2004 reads as follows:

> "The matter has been placed before the High Level Committee on 20-12-2003 and the committee has observed that the school is established during the year 1984-85 as an High School by opening of Class-VIII and it was admitted to grant-in-aid during the year 1990 and the additional posts/sections are sanctioned after 1-9-1985 are not eligible for admission into grant-in-aid as per Act 22/88 and the same was submitted to Government for issue their orders in the matter".

In the earlier Writ Petition, this Court while observing that the request of the petitioner was not properly considered by the High Level Committee, set aside the order dated 8-4-2004 and issued directions to place the matter before the High Level Committee for taking appropriate decision, in accordance with the rules. Thereafter, the order impugned herein has been passed and challenging which the present writ petition has been filed.

It is the case of the petitioner that though recommendations are made by the concerned authorities, however, impugned order is passed by the first respondent-Government rejecting the proposals,

without going into the merits of the claim, basing on the provisions under Section 4 of the Andhra Pradesh Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988. Impugned order dated 26-9-2005 reads as follows:

> "In the circumstances reported by the Director of School Education, A.P., Hyderabad, in his letter cited and based on the recommendations of the High Level Committee, Government after careful examination hereby rejected the proposal for admission of un-aided posts into Grant in Aid in respect of the additional sections/posts created after 1-6-1985 in Sri Sarada Aided High School, P.W.D. Colony, Pulivendula, Cuddapah District, since as per Section 4 of the Act 22/88, no school admitted to grant in aid prior to the 1st April 1977 shall be entitled to receive any grant in aid with respect to any additional sections opened or posts created after the 1st April, 1977."

It is submitted by Sri P.Gangaiah Naidu, learned senior Counsel appearing for the petitioner that the respondents have not considered the claim of the petitioner for admission of certain posts to grant-in-aid in proper perspective, and, merely rejected the claim referring to provision under Section 4 of the Act 22 of 1988, which has no application to the petitioner. It is further submitted by the learned Counsel that as much as no posts in the petitioner-school were admitted to grant-in-aid prior to 01-04-1977, the respondents cannot reject without going into the merits of the claim merely basing on the provision under Section 4 of the Act 22 of 1988.

Counter affidavit is filed on behalf of the respondents. In the counter affidavit, while reiterating the factual aspects, earlier orders passed, and, directions issued by this Court, it is stated that the petitioner-school was upgraded by opening un-aided VIII class during the academic year 1984-85, and, as such, additional

sections sanctioned during the years 1992 and 1993 are not eligible for admission to grant-in-aid. It is submitted by the learned Government Pleader appearing for the respondents that the additional sections were sanctioned after 1-4-1977 and therefore, the petitioner school is not entitle to claim admission of un-aided posts to grant-in-aid.

I have perused the records, which contain the report of the High Level Committee. The High Level Committee has not considered the claim of the petitioner with reference to any other provisions under the Andhra Pradesh Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988, and, instructions issued by the Government in this regard from time to time, and, merely rejected the proposals on the ground, that in view of the bar created under Section 4 of the Act 22 of 1988, the petitioner is not entitle to receive any grant-in-aid with respect to additional sections sanctioned after 01-04-1977. Before proceeding further, I deem it appropriate to refer to the provision under Section 4 of the Act 22 of 1988, which reads as under:

> **"RELEASE OF GRANT-IN-AID IN RESPECT OF CERTAIN ADDITONAL SECTIONS AND POSTS**: Notwithstanding anything contained in G.O.Ms.No. 344, Education (SSE) Department, dated 22nd July, 1985, no school admitted to grant-in-aid prior to the 1st April, 1977 shall be entitled to receive any grant-in-aid with respect to any additional sections opened or posts created after the 1st April, 1977 (unless the Committee concerned constituted in G.O.Rt.No. 220, Education (SSE-1) Department dated the 24th February, 1988 as modified in G.O.Rt.No. 124, Education (SSE-I) Department, dated the 27th January, 1989, and, the Government memo No. 245/SSE-I/89-1, Education Department, dated 9th February, 1989 recommends the release of grant-in-aid in respect of such additional sections and

posts."

From a reading of the above said provision, it is clear, that no school which was admitted to grant-in-aid prior to 1st April, 1977 is entitle to receive any grant-in-aid with respect to additional sections opened, or, posts created after 1st April, 1977, unless the Committee constituted vide G.O.Rt.No.220, dated 24-02-1988, as modified in G.O.Rt.No. 124, dated 27-01-1989 recommends release of grant-in-aid in respect of such additional sections and posts. Coming to the facts of the case on hand, in the very counter affidavit filed on behalf of the respondents, it is stated, that for the first time certain posts were admitted to grant-in-aid in the petitioner-high school with effect from 1-11-1989 vide G.O. Ms. No. 354 Education, dated 05-03-1992. As much as no posts were admitted to grant-in-aid prior to 01-04-1977, the request of the petitioner cannot be turned down referring to the provision under Section 4 of the Act 22 of 1988. In spite of the directions issued by this Court in the earlier Writ Petition, the respondents had misconstrued the provision under Section 4 of the Act 22 of 1988 and rejected the claim by impugned order dated 26-09-2005. As no other reason is stated in rejecting the claim of the petitioner, the impugned order is liable to be set aside. Accordingly the order passed by the first respondent in Memo No.13632/PS-1/2005, dated 26-9-2005 is set aside, and, the respondents are directed to consider the matter afresh by placing the matter before the High Level Committee constituted in this regard, which shall take appropriate decision. This exercise shall be completed within a period of three months from today.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

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*JUSTICE R. SUBHASH REDDY*

DATED: 17th November, 2006.
Msnr